

## INFORMATION PAPER

SUBJECT: Sharing National Guard Technician Military/Civilian Medical Information

1. The purpose of this paper is to clarify when National Guard Technician medical information may be shared among those having a need to know within the Ohio Army and Air National Guard, in compliance with the Privacy Act and HIPAA.
2. Background: Dual status technicians employed under the authority of 32 USC 709(b) must, as a condition of employment, maintain membership in the Ohio National Guard. Medical information may be developed from established processes in either status. These include medical examinations, fitness for duty evaluations, and line of duty or on-the-job injury rehabilitation processes. Commanders and supervisors need visibility over these medical issues to properly lead and manage the workforce. Accordingly, a HIPAA/Privacy Act Matrix is enclosed and the below guidelines developed.
3. Military members have an affirmative duty to report medical issues to their chain of command per AFI 48-123, Chapter 11; and AR 40-501. Failure of a member to comply with this obligation may constitute dereliction of duty, and can under some circumstances be a crime.
4. Privacy Act. Privacy act violations are predicated upon a release of information. The Act allows information sharing within the Department of Defense on a need-to-know basis, by excluding internal-to-DoD information sharing from the definition of release. Medical information, regardless of its source, may be freely shared among military commanders, technician supervisors, military personnel specialists, military medical personnel, and human resources specialists if needed to perform their duties. While all such records are Federal records under Federal law and regulations, there is potential liability under Chapter 1347 of the Revised Code for disclosures inconsistent with the duties of the parties to the disclosure.
  - a. Medical documentation submitted for Family Medical Leave Act (FMLA) requests may be shared within the DoD on a need to know basis.
  - b. Occupational Health Specialists may share “need-to-know” information relating to work limitations and recuperative periods established by medical providers with technician supervisory and HRO personnel.
  - c. Diagnosis and prognosis aren’t always needed; the need-to-know should be limited to work limitations. For example, technicians with work limitations arising from a civilian-incurred/civilian treated illness or injury may submit medical documents to invoke FMLA rights. The HRO probably need only inform the technician supervisor of the work limitations in the medical documentation, not the actual diagnosis/prognosis.

5. Privacy Act / Information sourced outside the Agency (DOL/OWCP): The DOL continues to own/control information relating to OWCP even when it's in ONG custody. DOL allows us to share information on a need to know basis; but only for case management. This excludes the military chain of command. Information developed from claims processes may be shared if the technician/member signs a medical release. This requirement to sign a release does not relieve the military member of the obligation to inform command as stated above.
6. The Health Insurance Portability and Accountability Act (HIPAA) applies specifically to Health Plans (Aetna, United Health Care) and Health Care Providers (i.e., organizations that do electronic billing or manage health information).
7. HIPAA does not apply to our reserve component clinics (See DoD 6025.18-R, Para C2.2). The Privacy Act governs information sharing and need- to- know within our federal workforce and within our agency. Reserve component clinics and their personnel are not defined by HIPAA as providers.
8. Providers contracted for military Periodic Health Assessments (PHAs) are not regulated by HIPAA while they are performing reserve component services. These providers are subject to HIPAA when working in the private sector, but not when working under a DoD contract. Contractors must comply with the Privacy Act implementation for DoD as described above and in the transmission of medical information.
9. DoD commanders may request medical information on members in their chain of command from any provider or organization (whether civilian or military) (References: DoD para C7-11 of DoD 6025.18-R and 45 CFR 164.512K). Organizations normally restricted by HIPAA regulations may resist providing the information, but requests by military commanders are excluded from HIPAA requirements. Thus, employees who are service members may while in military status be ordered to execute any required release and further ordered in military status to provide required medical records to the command, on pain of punishment under Article 92 of the Ohio Code of Military Justice.

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| HIPAA and Privacy Act Matrix     |                                       | Source of Medical Information         |   |  |  |  |  |   |  |
|----------------------------------|---------------------------------------|---------------------------------------|---|--|--|--|--|---|--|
|                                  |                                       | Military Member                       | Employee/Technician                     | Civilian Healthcare Provider/Hospital  | Active Duty MTF  | Guard/Reserve Medical Clinic   | Agency Occ Health  | DOL/OWCP  | Human Resources Office   |
| Requester of Medical Information | Commander                             | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable via commander exception (45 CFR 164.512(k); FR Vol 68, No. 68 (4/9/03))<br><u>Privacy Act</u> : N/A | <u>HIPAA</u> : Info obtainable via commander exception (45 CFR 164.512(k); FR Vol 68, No. 68 (4/9/03))<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know |
|                                  | Supervisor                            | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable with release<br><u>Privacy Act</u> : N/A  | <u>HIPAA</u> : Info obtainable with release<br><u>Privacy Act</u> : Info obtainable if need to know  | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know |
|                                  | Civilian Healthcare Provider/Hospital | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable provider-to-provider<br><u>Privacy Act</u> : N/A  | <u>HIPAA</u> : Info obtainable provider-to-provider<br><u>Privacy Act</u> : Info obtainable with release   | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable with release    | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable with release    | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable with release    |
|                                  | Active Duty MTF                       | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable provider-to-provider<br><u>Privacy Act</u> : N/A  | <u>HIPAA</u> : Info obtainable provider-to-provider<br><u>Privacy Act</u> : Info obtainable with release   | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know |
|                                  | Guard/Reserve Medical Clinic          | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable provider-to-provider<br><u>Privacy Act</u> : N/A  | <u>HIPAA</u> : Info obtainable provider-to-provider<br><u>Privacy Act</u> : Info obtainable if need to know  | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know |
|                                  | Agency Occ Health                     | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable provider-to-provider<br><u>Privacy Act</u> : N/A  | <u>HIPAA</u> : Info obtainable provider-to-provider<br><u>Privacy Act</u> : Info obtainable if need to know  | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know |
|                                  | A1/G1                                 | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable with release<br><u>Privacy Act</u> : N/A  | <u>HIPAA</u> : Info obtainable with release<br><u>Privacy Act</u> : Info obtainable if need to know  | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know |
|                                  | Human Resources                       | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable with release<br><u>Privacy Act</u> : N/A  | <u>HIPAA</u> : Info obtainable with release<br><u>Privacy Act</u> : Info obtainable if need to know  | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable if need to know |
|                                  | Insurance Carrier                     | Info obtainable if provided by member | Info obtainable if provided by employee | <u>HIPAA</u> : Info obtainable<br><u>Privacy Act</u> : N/A   | <u>HIPAA</u> : Info obtainable with release<br><u>Privacy Act</u> : Info obtainable with release   | <u>HIPAA</u> : N/A (DoD 6025.18-R(C2.2.7, C2.2.9))<br><u>Privacy Act</u> : Info obtainable with release    | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable with release    | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info possibly obtainable IAW Privacy Act Systems Notice DOL/GOVT-1 or with release | <u>HIPAA</u> : N/A<br><u>Privacy Act</u> : Info obtainable with release    |

NOTE: if both HIPAA and PA apply, most restrictive rule takes precedence

NOTE: Military member has affirmative obligation via regulation to disclose medical issues to command that may impact military service/duty.

NOTE: If information in custody of Agency originated through DOL/Worker's Comp process, DOL is still owner of the information and is the release authority (Privacy Act Systems Notice – DOL/GOVT-1)